

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	CRIMINAL NO.
)	
v.)	VIOLATION:
)	26 U.S.C. § 7201 (Tax Evasion)
ROBERT J. THERRIEN,)	
Defendant.)	
)	

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

1. At all times material to this Indictment, defendant ROBERT J. THERRIEN (“THERRIEN”) was an individual who resided in Boston, Massachusetts. During various periods between 1989 and 2006, THERRIEN served as President, Chief Executive Officer, and Chairman of the Board of Directors of Brooks Automation, Inc. At all times material to this Indictment, THERRIEN held more than 10% of Brooks’ outstanding stock. At all times material to this Indictment, THERRIEN and his wife maintained certain joint investment accounts at PaineWebber (now known as UBS).

2. At all times material to this Indictment, Brooks Automation, Inc. (“Brooks”) was a Delaware corporation with its headquarters in Chelmsford, Massachusetts. Brooks supplied integrated tool automation, factory interface, and factory automation solutions to the semiconductor industry.

3. At all times material to this Indictment, a nationally-known public accounting firm acted as the outside auditors of Brooks’ financial statements and prepared tax returns on

behalf of Brooks and certain individual officers and directors of Brooks (hereinafter, “Brooks’ outside accounting firm”). During the relevant period, Brooks’ outside accounting firm prepared personal tax returns as well as quarterly estimated tax projections for THERRIEN.

4. At all times material to this Indictment, a Boston-based law firm was retained by Brooks to serve as outside corporate counsel (hereinafter, “Brooks’ outside law firm”).

STOCK OPTIONS AND THEIR TAX TREATMENT (GENERALLY)

5. The term “stock option” refers to a right granted by a company to purchase a specific number of shares of the company’s stock at a specified price for a pre-determined period of time.

6. The term “employee stock option” refers to a stock option granted by a company to one of its employees. An employee to whom a stock option is granted typically must wait a specified vesting period before being allowed to exercise the option.

7. The term “exercise price” or “strike price” refers to the price at which the holder of an option will be permitted to purchase stock and is set on the day the stock option is granted.

8. The term “vesting” refers to the ownership right that an employee gradually acquires through length of service at the company to receive stock options. A vesting schedule requires that a specified period of time elapse after the options are granted before they can be exercised.

9. The tax treatment of stock options depends upon the type of options received by the employee. During the relevant period, the Internal Revenue Code and associated regulations recognized two types of options received by employees: incentive stock options (ISOs) and non-

qualified stock options (NQOs). ISOs are defined in Section 422 of the Internal Revenue Code; all other options are deemed NQOs.

10. If a company grants stock options to an employee holding 10% or more of the company's stock, such options may qualify for the favorable tax treatment afforded to ISOs only if, among other requirements, (i) the strike price is at least 110% of the fair market value (FMV) of the stock at the time the options are granted and (ii) the options are not exercisable after the expiration of five years from the date of the grant.

11. A stock option agreement sets forth the terms of the options the company has granted to an employee. Such an agreement specifies the type of options (ISOs or NQOs), the number of options, the exercise price, the vesting schedule, and the expiration date for the options.

12. Federal tax laws require the payment of ordinary income tax upon the exercise of NQOs. Thus, if a person exercises NQOs, thereby purchasing stock at a lower price than FMV on that date, the difference between the purchase price and FMV is taxed as ordinary income.

13. Although federal tax laws typically do not require the payment of ordinary income tax upon the exercise of ISOs, the difference between FMV and the exercise price is included in alternative minimum tax ("AMT") income, which may trigger the imposition of AMT. Profits from the sale of shares received through an exercise of ISOs may qualify to be taxed at the long-term capital gains rate, which is more favorable than regular income tax rates, provided other conditions are met.

THE BROOKS STOCK OPTION PLAN

14. During the relevant period, Brooks granted options to certain employees pursuant to its 1992 Combination Stock Option Plan (the “Plan”), as approved on May 13, 1992 and amended on December 5, 1994.

15. According to the Plan, its purpose was to provide long-term incentives and rewards to those key employees of Brooks who were in a position to contribute to the company’s long-term success and growth, to assist the company in retaining and attracting executives and key employees with requisite experience and ability, and to associate more closely the interests of such executives and key employees with those of the company’s stockholders.

16. The Plan provided for the issuance of stock options, including stock options intended to qualify as ISOs as defined in the Section 422 of the Internal Revenue Code.

1994 ISO AWARD TO THERRIEN

17. Pursuant to the Plan, on August 15, 1994, Brooks granted THERRIEN 75,000 ISOs, as reflected in a Unanimous Consent in Lieu of a Special Meeting of Board of Directors.

18. THERRIEN was provided with an Incentive Stock Option Agreement dated August 15, 1994, which reflected the terms of the award, including the number of ISOs subject to the specific grant, the exercise price of \$7.30 per share, a vesting schedule, and a five-year expiration date.

19. The Incentive Stock Option Agreement provided that, absent any modification to such requirement made at the company’s discretion, the options were to be exercised through a

written Notice of Exercise to the company.

20. In keeping with the five-year limitation set forth in Section 422 of the Internal Revenue Code, the Incentive Stock Option Agreement stated that “[n]otwithstanding any provision of this Option to the contrary, in no event may this Option be exercised after 5 years from the date of this Option.”

21. On or about December 8, 1994, Brooks had a 3-for-1 stock split. As a result of the stock split, the award of ISOs to THERRIEN on August 15, 1994 was updated, and THERRIEN thereafter held 225,000 ISOs at an exercise price of \$2.43 per share (hereinafter, the “225,000 ISOs”).

22. The total cost to THERRIEN to exercise the 225,000 ISOs was \$546,750.

23. The remaining terms of THERRIEN’s award – including the vesting schedule and expiration date of August 15, 1999 – did not change as a result of the stock split.

24. On or about March 1, 1995, THERRIEN executed an amended Form 3, “Initial Statement of Beneficial Ownership,” which reflected an expiration date for the ISOs of August 15, 1999. The amended Form 3 was filed with the Securities and Exchange Commission (SEC).

25. On August 13, 1999, the last business day before the 225,000 ISOs expired, the market value of 225,000 shares of Brooks stock was \$5,681,250, based upon a price of \$25.25 per share.

EXPIRATION OF THERRIEN'S 1994 ISO AWARD

26. At no time prior to August 15, 1999 did THERRIEN provide Brooks with a written Notice of Exercise regarding the 225,000 ISOs.

27. At no time prior to August 15, 1999 did THERRIEN inform Brooks, Brooks' outside law firm, Brooks' outside auditors, or PaineWebber that he had exercised the 225,000 ISOs.

28. At no time prior to August 15, 1999 did Brooks transfer – or THERRIEN receive – 225,000 shares of Brooks stock based upon an exercise of ISOs.

29. In early-November 1999, THERRIEN was informed that he had failed to exercise the 225,000 ISOs prior to their expiration on August 15, 1999.

30. On or about November 8, 1999, THERRIEN falsely represented to Brooks personnel that he had had a conversation with two outside directors in the late-May/early-June time frame during which it was decided that 225,000 ISOs would be converted to NQOs with the same exercise price and that the expiration date would be extended until August 15, 2000. In actuality, as THERRIEN well knew, no such conversation had occurred.

31. THERRIEN subsequently revised the false story he had told on November 8, 1999. The gist of the revised false story was that THERRIEN and two directors of Brooks had spoken by telephone in June 1999 and the directors authorized Brooks to extend a loan to THERRIEN in the amount of \$546,750 for the purpose of paying the exercise price due from THERRIEN to exercise the 225,000 ISOs. As THERRIEN well knew, no such discussions had

occurred.

32. The revised false story was advantageous to THERRIEN insofar as it permitted him to benefit from the favorable tax treatment afforded to ISOs.

33. On or about November 9, 1999, THERRIEN and/or his agents caused Brooks' outside accounting firm to prepare two updated quarterly tax projections for THERRIEN. The first analyzed a scenario in which THERRIEN exercised \$5,134,500 in ISOs, and the second analyzed a scenario in which he did not exercise any ISOs.

34. In or about November 1999, in order to memorialize and execute the revised false story, THERRIEN caused Brooks' outside law firm to prepare three documents – a Promissory Note, a Directors Ratification, and an SEC Form 5, “Annual Statement of Changes in Beneficial Ownership.”

35. THERRIEN executed all three documents in November 1999.

36. THERRIEN and his agents caused Brooks to transfer 225,000 shares of Brooks stock to THERRIEN in November 1999.

37. THERRIEN and his agents caused Brooks to amend its books and records erroneously to reflect an exercise of the 225,000 ISOs on August 13, 1999 at a price of \$2.43 per share.

38. On or about November 16, 1999, during an audit committee meeting held at Brooks, THERRIEN and the two directors falsely represented to the lead audit partner at Brooks' outside accounting firm that the revised false story was true.

39. THERRIEN and others caused the Directors Ratification and the Promissory Note to be transmitted to Brooks' outside accounting firm with the intent that they be relied upon by Brooks' outside accounting firm for the purpose of completing the year-end audit and certifying Brooks' publicly filed financial statement for 1999.

40. On or about November 18, 1999, THERRIEN caused a wire transfer in the amount of \$559,961.88 to be transmitted from a PaineWebber account controlled by him to a Brooks account at BankOne (now known as JP Morgan Chase) as re-payment of the purported loan, together with more than \$13,000 interest.

41. On or about December 12, 1999, THERRIEN executed Form 10-K for the year ended September 30, 1999 on behalf of Brooks, which incorporated representations made by THERRIEN relating to the exercise of 225,000 ISOs by THERRIEN.

42. On or about January 28, 2000, THERRIEN reviewed the status and differing tax treatments of his outstanding Brooks stock option grants, which included both ISOs and NQOs.

43. On or about October 10, 2000, THERRIEN filed with the Director, Internal Revenue Service at Andover, Massachusetts, a joint U.S. Individual Income Tax Return for calendar year 1999.

44. In connection with the preparation of his joint U.S. Individual Income Tax Returns for calendar year 1999, THERRIEN failed to disclose to his tax preparer at Brooks' outside accounting firm that the 225,000 ISOs had expired unexercised.

45. THERRIEN further failed to disclose to his tax preparer that his receipt of

225,000 shares of Brooks stock in November 1999 was not the result of any timely exercise of ISOs.

46. On his tax return for calendar year 1999, THERRIEN falsely reported – on Form 6251, “Alternative Minimum Tax – Individuals” – to the Internal Revenue Service that he had exercised 225,000 ISOs.

47. On his tax return for calendar year 1999, THERRIEN failed to report as ordinary income the difference between the exercise price and the FMV of the 225,000 shares of Brooks stock as of the date of the transaction.

COUNT ONE
Tax Evasion (26 U.S.C. § 7201)

The Grand Jury re-alleges and incorporates by reference paragraphs 1-47 of this Indictment and further charges that:

48. On or about October 10, 2000, in the District of Massachusetts, the defendant

ROBERT J. THERRIEN

a resident of Boston, Massachusetts, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America, for calendar year 1999, by filing and causing to be filed with the Director, Internal Revenue Service Center, at Andover, MA, a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, for the year 1999, wherein it was stated that their joint taxable ordinary income was \$1,813,261, whereas, as the defendant then and there well knew and believed, their true joint taxable income was substantially greater than the amount reported and a substantial additional tax was due and owing to the United States of America.

All in violation of Title 26, United States Code, Section 7201.

A TRUE BILL

Foreperson of the Grand Jury

Linda M. Ricci
Assistant United States Attorney

DISTRICT OF MASSACHUSETTS

July __, 2007

Returned into the District Court by the Grand Jurors and filed.

Deputy Clerk